

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

**COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT**

David A. Herndon and Terri Herndon,)
)
Plaintiffs,)
)
vs.)
)
MN Logging, LLC, and Paul Richard)
Nelon, individually,)
)
Defendants.)
)

SUMMONS

C.A. No.: 2022-CP-30-_____

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the Plaintiff or her attorney, Chadwick D. Pye, at P.O. Box 6346, Spartanburg, South Carolina, 29304 within thirty (30) days after the service thereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief sought in the Complaint.

CHADWICK D. PYE, LLC

 s/Chadwick D. Pye
 Chadwick D. Pye
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 Attorney for the Plaintiffs

January 11, 2022
 Spartanburg, South Carolina

5. That on or about December 10, 2019, Plaintiff David A. Herndon (hereinafter “Mr. Herndon”) was traveling down Highway 101 in Laurens County. Mr. Herndon noticed a very large truck, which turned out to be a 1991 Ken Worth tractor and trailer owned by MN

Logging and driven by Defendant Nelon, sitting at the stop sign located at the intersection of Highway 101 and Knighton Chapel Road.

6. Defendant Nelon failed to yield the right of way and turned left onto Highway 101 traveling North from Knighton Chapel Road causing Mr. Herndon to hit the rear left side of his trailer. Mr. Herndon's vehicle overturned upon impact.

7. As a result of the collision, Mr. Herndon suffered brain damage, injuries to his body, psychological injuries and damages, loss of enjoyment of life, has suffered and continues to suffer from pain and limitations, and suffered extreme economic loss. Mr. Herndon will need medical care for the rest of his life as a result of this violent collision. In addition to his injuries, Mr. Herndon's wife, Terri Herndon (hereinafter "Ms. Herndon"), has suffered losses due to the loss of companionship of her husband which directly resulted from her husband's physical and psychological injuries as well as his loss of earning capacity.

FIRST CAUSE OF ACTION
AS TO DEFENDANT NELON
(NEGLIGENCE / GROSS NEGLIGENCE)

8. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

9. Defendant Nelon was negligent, grossly negligent, reckless, willful and wanton at the time and place in question in one or more of the following particulars, to wit:

- (a) In failing to keep his commercial truck under proper control;
- (b) In driving the commercial truck in a reckless manner under South Carolina law;
- (c) In failing to properly equip the commercial truck with adequate and safe brakes, and if so properly equipped, in failing to properly utilize them;

- (d) In failing to properly equip the commercial truck with adequate and safe steering mechanisms, and, if so properly equipped, in failing to properly utilize the same;
- (e) In violating state and federal statutes and regulations, including but not limited to 49 C.F.R. §§ 350 to 399;
- (f) In driving the commercial truck without due caution in a manner so as to endanger a person in violation of O.C.G.A. § 40-6-241;
- (g) In driving the commercial truck in reckless disregard for the safety of people in violation of O.C.G.A. § 40-6-390;
- (h) In failing to stop, swerve, or take other evasive action to avoid the collision;
- (i) In failing to follow the traffic signs and the rules of the road;
- (j) In failing to act as a reasonable and prudent driver would have acted under the same or similar circumstances;
- (k) In driving too fast for conditions;
- (l) In driving while distracted by a mobile device and / or electronic device;
- (m) In failing to yield the right of way to Mr. Herndon;

10. As a direct and proximate result of the aforementioned acts of negligence, gross negligence, recklessness, willfulness and / or wantonness on behalf of Defendant Nelon, Mr. Herndon was without a vehicle for quite some time, suffered brain damage and injuries to his person and psyche which required and continues to require extensive and expensive medical care and treatment, pain and suffering and loss of enjoyment of life.

SECOND CAUSE OF ACTION
AS TO DEFENDANT MN LOGGING
(VICARIOUS LIABILITY OF DEFENDANT MN LOGGING)

11. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

12. At the time of the collision, Defendant Nelon was the employee, agent, servant, or independent contractor of Defendant MN Logging. Accordingly, Defendant MN Logging is vicariously liable for the acts of Defendant Nelon for the negligence, recklessness, willfulness and wantonness set forth herein above.

13. Regardless of the employment relationship between Defendant MN Logging and Defendant Nelon, Defendant MN Logging is the registered owner of the 1991 Ken Worth truck involved in this collision and is therefore strictly liable and responsible for the accident of the driver of that vehicle.

THIRD CAUSE OF ACTION
AS TO DEFENDANT MN LOGGING
(NEGLIGENCE)

14. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

15. Defendant MN Logging had a duty to act reasonably in hiring, training, supervising and retaining Defendant Nelon and to promulgate and enforce rules and regulations to ensure it drivers and vehicles are safe.

16. Defendant MN Logging failed to properly supervise its employee, Mr. Nelon.

17. Defendant MN Logging breached its duty to use reasonable care to select, supervise, train and retain Defendant Nelon and failed to properly maintain the commercial truck to make it safe for use on the public roadways.

18. Defendant MN Logging was negligent, grossly negligent, reckless, willful and wanton at the time and place in question in allowing Defendant Nelson to drive its vehicle.

19. Defendant MN Logging had a duty to use reasonable care to select an employee who was competent and fit to perform the duties required as an employee, including the safe operation of a commercial motor vehicle. Defendant MN Logging knew, or should have known, that Defendant Nelson was not a safe driver and Defendant MN Logging negligently put him behind the wheel of a large, heavy and dangerous vehicle capable of causing massive injuries, or even death, to others on the roadway if not safely operated.

20. As a direct and proximate result of the aforementioned acts of negligence, gross negligence, recklessness, willfulness and / or wantonness on behalf of Defendant MN Logging, Mr. Herndon suffered injuries to his person and psyche which required and continues to require extensive and expensive medical care and treatment, pain and suffering and loss of enjoyment of life.

THIRD CAUSE OF ACTION
AS TO BOTH DEFENDANTS
(LOSS OF CONSORTIUM)

21. Plaintiffs incorporate herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

22. Mr. Herndon has been married to his wife, Terri, for over 30 years. During their long marriage they have come to rely on each other daily.

23. As a result of the actions of the two defendants, Ms. Herndon has lost the services and support of her husband that she has grown accustomed to over the past 30 plus years. The actions of these defendants have caused damage to the quality of their marriage. Ms. Herndon has to care for the physical and psychological needs of Mr. Herndon that resulted from this wreck. Mr. Herndon has not been able to fulfill his husbandly duties that he has done for so

many years and Ms. Herndon has lost this and should be appropriately compensated for these losses.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for actual and punitive damages in amounts to be deemed appropriate by the Court and jury at the trial of this case, for the costs of this action, and for such other and further relief as the Court and jury may deem just and proper.

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